

**(2002) 08 JH CK 0017**

**Jharkhand High Court**

**Case No:** LPA No"s. 67 and 88 of 2000

K. Ramachandran and Rajeev  
Mohan

APPELLANT

Vs

United Commercial Bank and  
Others

RESPONDENT

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**Date of Decision:** Aug. 14, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 14
- UCO Bank (Officers) Service Regulations, 1976 - Regulation 17

**Hon'ble Judges:** S.J. Mukhopadhaya, J; Lakshman Uraon, J

**Bench:** Division Bench

**Advocate:** V. Shivnath, LPA No. 67/2000 and R. Krishna, LPA No. 88/2000, for the Appellant; P.K. Sinha and A.K. Srivastava, for the Respondent

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### **Judgement**

S.J. Mukhopadhaya, J.

In both the appeals, as common question has been raised and the respondents are common, they were heard together and are being disposed of by this common judgment.

2. The case of the appellants, K. Ramachandran and Rajeev Mohan is that they were Junior Management Grade Scale I Officer (J.M.G. Scale I, for short) of United Commercial Bank (Bank, for short), appeared in competitive test for promotion to the next higher Middle Management Grade II (M.M.G. Scale II) post and having competed, were informed by similar letter both having common No. PER/PRM/COM/425/ 94, dated 1.2.1994 that the competent authority decided to promote them to M.M.G. Scale II (w.e.f. 15th January, 1994) subject to the decision of various writ petitions filed by a few officers in the High Court at Calcutta and Cuttack.

At that time, both the appellants were posted at Jamshedpur in two different branches. Subsequently, the Bank transferred and posted them by two orders No. T.O. No. BZO/TRO/94/5 and 8, both dated 22nd March, 1994 as a Manager, Bariarpur (K. Ramachandran) and Manager, Chapra (Rajeev Mohan). On such transfer and posting, both the appellants represented against the transfer. In the meantime, the Branch Manager, having taken step to relieve them from Jamshedpur to join the transferred place, the appellants refused promotion.

The appellant-K. Ramachandran vide letter dated 4th April, 1994 requested to stay his transfer and by subsequent letter dated 23rd April, 1994, he informed the Manager, UCO Bank, Jugsalai, Jamshedpur that he is awaiting the decision on his representation. He further informed that in all wisdom, if he was to be relieved then in such case he refuse the offer of promotion without prejudice.

Similarly, appellant-Rajeev Mohan vide his letter dated 5th May, 1994 while requested to stay his transfer, by subsequent letter dated 16th May, 1994 informed the Manager, UCO Bank, Gamaria that if it is not possible to keep him at Jamshedpur after his promotion, then he refuse to accept promotion to M.M.G. II.

The Bank, thereafter, vide order dated 5.9.1994, taking into consideration the refusal of promotion by K. Ramachandran, reverted him to his substantive post of J.M.G. Scale I and ordered that he will be "ineligible" for promotion to M.M.G. Scale II for three calendar years, ie. 1995, 1996 and 1997 as per clause 14.1 of the Promotion Policy, 1992. By another similar order dated 5.9.1994, the appellant-Rajeev Mohan was also reverted to his substantive post of J.M.G. Scale I and was made "ineligible" for promotion to M.M.G. Scale II for three calendar years, i.e. 1995, 1996 and 1997.

Curiously, both the appellants challenged the aforesaid penal orders both dated 5th September, 1994 after about four years on different grounds. The appellant-K. Ramachandran also challenged clause 14.1 of the Promotion Policy, 1992, circulated vide Circular No. 203 of 1992-93, dated 1st October, 1992 as ultra vires being viola-tive of Article 14 of the Constitution of India.

There appears to be substance in the contention aforesaid.

3. The Promotion Policy, 1992, circulated vide Circular No. 203 of 1992-93, dated 1st October, 1992 has been framed by the Board of Directors of the Bank under Regulation 17 of the UCO Bank (Officers) Service Regulation, 1976 (Service Regulation, 1976 for short). For promotion from J.M.G. Scale I to M.M.G. Scale II, the criteria for eligibility has been fixed under Clause 2.1(i). An officer having seven years of satisfactory service in J.M.G. Scale I and two years of service experience in a rural branch, is eligible for promotion to M.M.G. Scale II. As per policy, promotions can be granted through two channels, one of them is "written test channel". As per Clause 11.9, while officer(s) on promotion may be posted at any branch or office in the country or abroad at the discretion of the Bank, under Clause 14, the effect of

refusal of promotion and posting stipulated, which reads as follows :--

"14. Officers who refuse to accept promotion and posting.--(1) An officer who appears for promotion and gets selected and he refuses to accept promotion or posting on such promotion shall be considered ineligible for promotion for the next three calendar years after the close of the calendar year in which he refusal takes place. If he refuses second time also, he will be permanently debarred for promotion.

(2) The decision of the Chairman and Managing Director in this regard shall be final.

(3) Non-participation in the interview will make a candidate ineligible for promotion. However, it will not be construed as refusal for promotion."

4. In the present case, the only issue for determination is whether Clause 14.1 of Promotion Policy, 1992 is ultra vires or not.

5. According to the counsel for the appellants, the Clause 14.1 is arbitrary, irrational, having no nexus with the object to achieve. It was further submitted that the Clause 14.1 is penal in nature, amounts to inflicting major punishment without notice and hearing and is violative of both Articles 14 and 16(1) of the Constitution of India.

6. According to the counsel for the Bank, the act of refusal of promotion is a voluntary action of the employee and not the employer. They are class by themselves separate from those, who accept promotion. In such a case, there being a seasonal classification between two sets of employees, it cannot be alleged to be violative of Article 14 of the Constitution, nor the Clause 1.41 can be termed arbitrary. Further, according to the counsel for the Bank, the postponement of promotion for a limited period, on refusal of promotion, has a reasonable nexus with the object to be achieved. As per UCO Bank Officers' Employees (Conduct) Regulation, 1976, the employees of the Bank all times are required to ensure and protect the interest of the Bank in discharging his duties with utmost integrity, honesty, devotion and diligence and not supposed to do anything unbecoming of a Bank Officer. The refusal of transfer on promotion not only amounts in subordination but also violation of the UCO Bank Officers' Employees (Conduct) Regulation, 1976 as such acts suggest that the employee is not inclined to discharge duties with utmost honesty and devotion.

7. Mr. P.K. Sinha, learned senior counsel for the Bank submitted that the word "ineligible" for promotion to be read down in a manner to make it intra vires. If the harmonious construction and meaning is given to the Promotion Policy, Clause 14.1 cannot be stated to be violative of Article 14 of the Constitution of India.

He also relied on the decision of the Supreme Court in [Bank Officers and Officials House Building Cooperative Society Ltd. Vs. Sanjeevappa and Others](#), , to suggest that the Supreme Court also upheld the rules for debarring regular promotion, but such submission is misconceived.

That was a case, wherein the appellant declined ad hoc promotion to the higher post. The Supreme Court by its order dated 7th October, 1991 directed the respondent-Railway to produce the relevant rule debarring promotion on refusal. In spite of court's order, no such rule was produced before the Supreme Court as evident from paragraph 3 of the order. In such background, the Supreme Court observed that a Government servant may decline ad hoc promotion because of his family circumstances but he may not like to take such a risk when the regular promotion is involved. The respondent- Railway were directed to promote the appellant of the said case, he having selected on 27th July, 1983 though earlier the appellant refused to accept ad hoc promotion.

8. The Promotion Policy, 1992 has been framed under Regulation 17 of the UCO Bank Officers' Service Regulation, 1979 which reads as follows :--

17. (1) Promotions to all grades of officers in the Bank shall be made in accordance with policy laid down by the Board from time to time having regard to the guidelines of the Government, if any.

(2)       \*\*\*                       \*\*\*                       \*\*\*                       \*\*\*

(The guidelines issued by the Government in terms of proviso to Regulation 17 are given in Annexure 6)."

As per guideline issued by the Government as contained in Annexure 6 to the Service Regulation, 1979, seven years of satisfactory service including two years in rural branch prescribed for promotion from J.M.G. Scale I to M.M.G. Scale II. There is also a provision to relax the eligibility in case of eligible officers is less than three times. But no penal provision made such as "ineligibility" from promotion or debarment on one or other ground.

It is always open for the competent authority to frame rule prescribing penal action for an act of omission or commission. However, it cannot be arbitrary and should not be in violation of rules of natural justice.

9. A statute can also be declared to be valid where any term used in the Act per se seems to be without jurisdiction but can be read down in order to make it constitutionally valid by separating and excluding the part which is invalid or by interpreting the word in such a fashion in order to make it constitutionally valid. This, however, does not under any circumstances means that where the plain and literal meaning that follows from a bare reading of the provision of the Act, Rule or Regulation is that it confers arbitrary, uncanalised, unbridled, unrestricted power. (Ref. the decision of the Supreme Court in [Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others](#), .

The doctrine of reading down cannot be availed of for saving the Clause 14.1 of Promotion Policy, 1999 for other reasons mentioned hereunder.

The withholding of promotion is a punishment under Regulation 4 of the UCO Bank Officers' Employees (Discipline and Appeal) Regulation, 1976 (Discipline Regulation, 1976 for short) framed by the Board u/s 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 in consultation with the Reserve Bank and Central Government, as quoted hereunder :--

"4. Penalties.--The following are the penalties which may be imposed on an officer employee, for acts of misconduct or for any other good and sufficient reasons,--

Minor Penalties :

(a) censure;

(b) withholding of increments of pay with or without cumulative effect;

(c) withholding of promotion;

(d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders;

(e) reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the officer's pension;

Major Penalties :

(f) save as provided for in (e) above reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;

(g) reduction to a lower grade or post;

(h) compulsory retirement;

(i) removal from service which shall not be a disqualification for future employment;

(j) dismissal which shall ordinarily be a disqualification for future employment."

Under Regulation 4, reduction to a lower grade or post is a major penalty. Even in such case, a person who is inflicted with punishment of reduction to a lower grade or post is entitled for promotion to higher grade or post as and when again his turn comes. On the other hand, in the case of debarment of promotion permanently, a person is not entitled for promotion for whole of the service career. Thus, debarment of promotion permanently being more stringent than the major punishment of reduction to a lower grade or post, for all purpose is to be constructed a major penalty.

In almost similar circumstances in the case of [Kulwant Singh Gill Vs. State of Punjab](#), the Supreme Court held that stoppage of increment with cumulative effect is major

punishment.

For the purpose of inflicting penalty under Regulation 4 of Discipline Regulation, 1976, it is required to communicate the charge to the employee and only after giving opportunity as per rule, such penal action can be taken. Whereas no such procedure required to be followed for imposing major and stringent penal order under Clause 14.1 of Promotion Policy, 1992.

It is a settled law that any provision of Act, Rule or Regulation if confers arbitrary, uncanalised, unbridled, unrestricted power without recording any reason and without adhering to the principle of natural justice and equality before the law as envisaged in Article 14, it being against the Constitution, is ultra vires.

10. In the case of [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#), a Constitution Bench of the Supreme Court held (6 : 1) that the word "law" in Article 21 meant a law which is not unreasonable, not arbitrary and which is conformed to the mandate of Article 14. If the procedure prescribed by a law is "unreasonable" or "arbitrary", it would be invalid under Article 21 read with Article 14 of the Constitution. Justice Bhagwati (whose spoke for himself and Untwalia and Fazal Ali, JJ.) observed :--"Article 14 strikes at arbitrariness in State action and ensures fairness and equity of treatment. The principle of reasonableness which, legally as well as philosophical is an essential element of equity or non-arbitrariness, pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer to the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied."

The Chief Justice Beg, Justice Chandrachud and Justice Krishna Iyer, though delivered separate concurring judgments, agreed with the views aforesaid.

In the case of [Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others](#), a Constitution Bench of five Judges observed ;--

"The doctrine of classification which is evolved by the courts is not a paraphrase of Article 14, nor is it the objective and under all that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equity. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equity under Article 14 would be breached. Whatever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an authority under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness, pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

Now, it is a settled law that the Court can legitimately stigmatise a legislative or executive action, if unjustified, gross unfair or totally unjust. Any action if arbitrary beyond the bounds of all reasons, it excludes all judicial or administrative discretion, gross inconsistency of a legislative or executive policy is discriminatory, arbitrary, unreasonable, unjust and if unfair and not proper, it will offend Article 14 of the Constitution.

What is not permissible under a statutory regulation cannot be permitted by framing a rule under any such regulation. If no penalty can be imposed except in the manner prescribed under 4 of the Discipline Regulation, 1976, it cannot be circumvent by framing any subordinate rule under any Regulation (Service Regulation, 1979). Further, the Clause 14.1 of Promotion Policy, 1992 being mandatory in nature and no discretion having left to the Chairman and Managing Director of the Bank to take decision in that regard under Clause 14.2, it cannot be upheld.

11. For the reasons aforesaid, I have no option but to declare Clause 14.1 of Promotion Policy, 1992 as ultra vires to the Constitution and violative of Article 14 of the Constitution of India. The said Clause 14.1 contained in Circular No. 203 of 1992-93, dated 1st October, 1992 is, accordingly, set aside.

12. Now, the question arises as to what relief to which writ petitioners-appellants are entitled, they having made ineligible for promotion to M.M.G. Scale II for the years 1995, 1996 and 1997 vide orders both dated 5.9.1994.

13. Admittedly, the effect of order dated 5.9.1994 remained effective for the calendar years 1995, 1996 and 1997. Thereafter, the effect of the order dated 5.9.1994 having lost its force and the appellants having moved before this Court in 1998, I am not inclined to interfere with the orders dated 5.9.1994.

The judgment passed by the learned single Judge is, accordingly, set aside in part so far it relates to Clause 14.1 of the Promotion Policy, 1992.

14. Both the appeals stand disposed of. However, in the facts and circumstances, there shall be no order, as to costs.

Lakshman Uraon, J.

15. I agree.